

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DR. THOMAS M. EDSALL, and)	
GRISEL EDSALL,)	
Plaintiffs)	
)	
v.)	
)	CIVIL ACTION NO. 04-40106-FDS
ASSUMPTION COLLEGE, DR.)	
THOMAS R. PLOUGH, DR. JOSEPH)	
F. GOWER, and DR. JOHN F. MCCLYMER,)	
Defendants)	
)	

**DEFENDANTS' MOTION TO AMEND MOTION TO DISMISS TO INCLUDE
ADDITIONAL AFFIRMATIVE DEFENSE**

Defendants Assumption College, *et al.* hereby move this Court pursuant to Federal Rule of Civil Procedure 15(a) for permission to file the amended Motion to Dismiss attached hereto as Exhibit A to include the additional basis that the Court does not have subject matter jurisdiction pursuant to M.R.Civ.P 12(b)(1) because of Plaintiff's failure to exhaust administrative remedies. As grounds therefore, Defendants state that

- (1) recent case law has addressed the issue that the "exhaustion of remedies" doctrine applies when faculty handbooks provide internal grievance procedures, Neiman v. Yale University, 2004 WL 1574253 (Conn. 2004) (copy attached hereto as Exhibit B);
- (2) leave shall be freely given when justice so requires;
- (3) Plaintiffs will not be prejudiced because there has been no Rule 16 Conference in this matter to date, there has been no hearing on the previously filed motion to dismiss, there has been no discovery, and no trial date has been set for this case.

WHEREFORE, Defendants respectfully request that this Court allow its Motion to Amend Its Answer.

CERTIFICATION OF CONFERENCE

The undersigned represents that on August 20, 2004, the undersigned conferred with Plaintiffs' counsel, Paul J. Klehm regarding the above Motion.

Dated: September 2, 2004

Defendants,

ASSUMPTION COLLEGE,
DR. THOMAS R. PLOUGH,
DR. JOSEPH F. GOWER, and
DR. JOHN F. MCCLYMER,

By their attorneys,

/s/ Douglas F. Seaver
Douglas F. Seaver (BBO# 450140)
Hinckley, Allen & Snyder LLP
28 State Street
Boston, MA 02109-1775
(617) 345-9000

CERTIFICATE OF SERVICE

I, Douglas F. Seaver, hereby certify that I have this 2d day of September 2004 forwarded a copy of Defendants' Motion To Amend Answer To Include Additional Affirmative Defense via e-mail and first class mail, postage pre-paid to Plaintiffs' counsel of record: James B. Krasnoo, Esq. & Paul J. Klehm, 23 Main Street, Terrace Level, Andover, MA 01810.

/s/ Douglas F. Seaver
Douglas F. Seaver